Heavy Construction Laborers Local 60, LIUNA *and* The General Contractors Association of New York and Mergentime Corporation and Local 46 Metallic Lathers Union and Reinforcing Iron Workers of New York and Vicinity. Case 2–CD–800

November 29, 1991

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed October 1, 1990, by the General Contractors Association of New York, Inc. on behalf of Mergentime Corporation, the Employer, alleging that the Respondent, Heavy Construction Laborers Local 60, LIUNA (Local 60), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Local 46 Metallic Lathers Union and Reinforcing Iron Workers of New York and Vicinity (Local 46). A hearing was held in this proceeding on December 19,1990, before Hearing Officer Shirley Francis.

Upon the close of the hearing, the proceeding was transferred to the Board. Thereafter, all parties filed briefs. Local 46's brief included a motion to quash the notice of hearing based on an agreed-upon method for voluntary adjustment of the dispute binding on all the parties. In response, Mergentime and Local 60 filed a joint motion to reopen the record. On May 7, 1991, the Board granted the joint motion to reopen the record to receive evidence concerning whether there exists an agreed-upon method of voluntary adjustment binding on all the parties.

A supplemental hearing was held in this proceeding on June 13, 1991, before Hearing Officer Shirley Francis. Upon the close of the hearing, the proceeding was again transferred to the Board. Subsequently Local 46 filed a brief to the Board.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that Mergentime Corporation is a New Jersey corporation engaged in the business of heavy construction. Annually, in the course of its business operations, the Employer derives gross revenues in excess of $50,000 and purchases and receives materials and services in excess of that amount directly from vendors located outside the State of New Jersey. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that Local 60 and Local 46 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is a member of the General Contractors Association of New York which has a series of collective-bargaining agreements with Local 46. The current agreement covers all lathers, foremen, journeymen, apprentices, and trainees. The Employer is also a member of the Construction Industry Council of Westchester and Putnam Counties which has a series of collective-bargaining agreements with Local 60. The current agreement covers all tending masons, plasterers, carpenters, and other building and construction crafts.

The Employer asserted that work on the Croton Aqueduct site began in about 1985. The Employer presented testimony that initially all work involving the underground installation of reinforcement bars was assigned to employees represented by Local 60. Specifically, the initial work assignment, as described by the Employer, was that the Local 46-represented employees bent the bars above ground and that the Local 60-represented employees installed the bars in the tunnel along with their other tunnel work.

Between the period of April to November 1989, Local 46 engaged in a series of actions in furtherance of its claim for the underground installation work. During this period, the Employer filed an unfair labor practice charge against Local 46 alleging that it violated Section 8(b)(4)(ii)(D) of the Act by filing grievances with a trade board designed to resolve disputes between that local and General Contractor Association employers. On June 9, 1989, that charge was dismissed on the grounds that the dispute was voluntarily adjusted when Local 46 presented a written disclaimer that it was not seeking the work assigned at that time to Local 60-represented employees.

On about November 17, 1989, the Employer filed a petition to enjoin Local 46 from proceeding to arbitrate a grievance claiming monetary damages based on an alleged contract violation by the Employer when it failed to assign the underground installation work to Local 46. About August 20, 1990, the district court denied the injunction and compelled Local 46 and the Employer to arbitrate the dispute.

On about September 17, 1990, the Employer reassigned the work in dispute at the Croton Aqueduct site formerly assigned to Local 60-represented employees to Local 46-represented employees. The Employer reassigned the work in order to mitigate any damages it

would be faced with if an arbitrator determined that the underground installation work should have been assigned to Local 46-represented employees. Local 60 responded about September 25 by giving the Employer official notice that if the work of underground replacement of reinforcement bars at the Croton jobsite was taken away from Local 60-represented employees it intended to take legal action necessary to protect its rights, including engaging in a work stoppage.

B. *Work in Dispute*

The disputed work involves the underground installation of reinforcement bars in the water tunnel located beneath the Old Gate House at the Croton Aqueduct Construction site in Yorktown, New York.

C. *Contentions of the Parties*

In support of its motion to quash filed in connection with the original proceeding, Local 46 contended that all parties to the proceeding are bound to resolve this dispute in accordance with the AFL–CIO procedure for resolving disputes in the construction industry. Specifically, Local 46 argued that the collective-bargaining agreement in effect between Local 60 and the Employer provided that jurisdictional disputes be resolved in accordance with the National Joint Board for the Settlement of Jurisdictional Disputes in the construction industry pursuant to the AFL–CIO constitution. It further argued that the Joint Board procedure was binding on all national and international unions affiliated with the AFL–CIO's Building and Construction Trades Department and their local constituent bodies, including both Local 46 and Local 60.

During the course of the supplemental hearing on remand, the Employer introduced evidence in support of the contention that a voluntary method of dispute resolution binding on all the parties exists, including a copy of the ''Plan for the Settlement of Jurisdictional Disputes in the Construction Industry Including Procedural Rules and Regulations,'' which states that it is applicable to all national and international unions affiliated with the AFL–CIO Building and Construction Trades Department and their local constituent bodies. Neither Local 60 nor Local 46 refuted the Employer's contention. Local 60 and the Employer affirmatively stated that they were bound to the AFL–CIO plan. Local 46 referred to its position in the original hearing. At the original hearing Local 46 stated both that it is affiliated with the AFL–CIO Building and Construction Trades Department and that therefore it is bound to the dispute resolution mechanism set forth in the plan by its terms. Further, in its brief on remand, Local 46 reaffirmed its position that a voluntary adjustment method exists requiring that the notice of hearing be quashed. In this regard, it described the National Joint Board referred to in the most recent collective-bargaining agreement between Local 60 and the Employer as the predecessor to the plan for the settlement of jurisdictional disputes in the construction industry.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. In this case, we find, essentially in agreement with all the parties, that the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry constitutes an agreed-upon method for the voluntary adjustment of the instant dispute.

The plan provides for the handling of disputes over work assignments without resort to strikes or unlawful work stoppages. Pursuant to its procedures, it is applicable to all international and national unions affiliated with the AFL–CIO Building and Construction Trades Department and their local constituent bodies. It is undisputed that both Unions here are local constituent bodies of member unions of the Building and Construction Trades Department. Thus, the Unions are required to abide by the plan's procedures for the settlement of jurisdictional disputes. See *Operating Engineers Local 139 (Allied Construction)*, 293 NLRB 604 (1989).

Finally, the Employer notes that it is signatory to a collective-bargaining agreement with Local 60 which provides that jurisdictional disputes in the construction industry will be resolved in accordance with the National Joint Board pursuant to the AFL–CIO constitution. The Employer interprets this provision of the collective-bargaining agreement as binding it to the plan, and no party contends otherwise. Accordingly, because all parties have conceded they are bound to submit jurisdictional disputes to the plan, we shall quash the notice of hearing.

ORDER

The notice of hearing issued in this proceeding is quashed.